

SERVICE DATE - MAY 19, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42074

C&NC RAILROAD CORPORATION
v.
UNION PACIFIC RAILROAD COMPANY

Decided: May 16, 2003

On September 6, 2002, C&NC Railroad Corporation (C&NC)¹ filed an informal complaint with the Board seeking damages pursuant to 49 CFR 1130.2. It also supplemented its filing with a letter on January 29, 2003. As part of its common carrier rail services, C&NC holds itself out to provide a depressed center heavy duty flat car pursuant to the terms and conditions set forth in Item 645, Supplement 43 to Freight Tariff RPS 6740-F (Freight Tariff).

The complaint states that, on July 26, 2000, Union Pacific Railroad Company (UP)—acting on behalf of one of its shippers needing specialized service—ordered a heavy duty flat car, Car No. CNUR900 (the car), from C&NC. On November 2, 2000, UP placed the car at its customer's location in West Allis, WI, for loading. On November 17, 2000, the car was released empty from that location. UP stated that the car was rejected by the shipper because the dimensions of the car were smaller than published and it was therefore unacceptable for the shipper's intended use.² On November 30, 2000, C&NC billed UP for 15 days detention charges pursuant to its Freight Tariff. UP denied the request for payment.

C&NC has asked the Board to determine under the informal complaint procedures of 49 CFR 1130.2 the legality of UP's refusal to pay published charges for origin detention under the provisions of its Freight Tariff. C&NC argues that these charges are the legal charges due and owing from UP to C&NC, and that it is entitled to damages in the amount of \$9,700 plus costs and interest.

The informal complaint will be dismissed. C&NC's detention charges are designed to protect C&NC when its cars are held longer than necessary. In this case, the party that held the car was the shipper, not UP. UP is neither consignor nor consignee in this arrangement (see Mid

¹ C&NC is a Class III common carrier that conducts rail service along a line of railroad between Connorsville and New Castle, IN.

² C&NC states that it had the car remeasured with laser instruments and found it to be slightly larger than its published description.

Atlantic Conference v. United States, 353 F. Supp. 1109, 1126 (D.D.C. 1972)), and thus cannot be held liable for the detention charges.

It is ordered:

1. C&NC's informal complaint is dismissed.
2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary